

## § 405.1102

days of receipt of the appellant's request for escalation, unless the 180 calendar day period is extended as provided in this subpart.

[70 FR 11472, Mar. 8, 2005, as amended at 74 FR 65336, Dec. 9, 2009]

### § 405.1102 Request for MAC review when ALJ issues decision or dismissal.

(a)(1) A party to the ALJ hearing may request a MAC review if the party files a written request for a MAC review within 60 calendar days after receipt of the ALJ's decision or dismissal.

(2) For purposes of this section, the date of receipt of the ALJ's decision or dismissal is presumed to be 5 calendar days after the date of the notice of the decision or dismissal, unless there is evidence to the contrary.

(3) The request is considered as filed on the date it is received by the entity specified in the notice of the ALJ's action.

(b) A party requesting a review may ask that the time for filing a request for MAC review be extended if—

(1) The request for an extension of time is in writing;

(2) It is filed with the MAC; and

(3) It explains why the request for review was not filed within the stated time period. If the MAC finds that there is good cause for missing the deadline, the time period will be extended. To determine whether good cause exists, the MAC uses the standards outlined at §§ 405.942(b)(2) and 405.942(b)(3).

(c) A party does not have the right to seek MAC review of an ALJ's remand to a QIC or an ALJ's affirmation of a QIC's dismissal of a request for reconsideration.

(d) For purposes of requesting MAC review (§ 405.1100 through § 405.1140), unless specifically excepted the term, "party," includes CMS where CMS has entered into a case as a party according to § 405.1012. The term, "appellant," does not include CMS, where CMS has entered into a case as a party according to § 405.1012.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65336, Dec. 9, 2009]

## 42 CFR Ch. IV (10–1–10 Edition)

### § 405.1104 Request for MAC review when an ALJ does not issue a decision timely.

(a) *Requesting escalation.* An appellant who files a timely request for hearing before an ALJ and whose appeal continues to be pending before the ALJ at the end of the applicable ALJ adjudication period under § 405.1016 may request MAC review if—

(1) The appellant files a written request with the ALJ to escalate the appeal to the MAC after the adjudication period has expired; and

(2) The ALJ does not issue a decision, dismissal order, or remand order within the later of 5 calendar days of receiving the request for escalation or 5 calendar days from the end of the applicable adjudication period set forth in § 405.1016.

(b) *Escalation.* (1) If the ALJ is not able to issue a decision, dismissal order, or remand order within the time period set forth in paragraph (a)(2) of this section, he or she sends notice to the appellant.

(2) The notice acknowledges receipt of the request for escalation, and confirms that the ALJ is not able to issue a decision, dismissal order, or remand order within the statutory timeframe.

(3) If the ALJ does not act on a request for escalation within the time period set forth in paragraph (a)(2) of this section or does not send the required notice to the appellant, the QIC decision becomes the decision that is subject to MAC review consistent with § 405.1102(a).

(c) *No escalation.* If the ALJ's adjudication period set forth in § 405.1016 expires, the case remains with the ALJ until a decision, dismissal order, or remand order is issued or the appellant requests escalation to the MAC.

[70 FR 11472, Mar. 8, 2005, as amended at 70 FR 37704, June 30, 2005; 74 FR 65337, Dec. 9, 2009]

### § 405.1106 Where a request for review or escalation may be filed.

(a) When a request for a MAC review is filed after an ALJ has issued a decision or dismissal, the request for review must be filed with the entity specified in the notice of the ALJ's action. The appellant must also send a copy of